

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. APP (SJ) NO.745 OF 2008
PRABHAKAR BHARTI & DIWAKAR BHARTI
CR. APP (SJ) NO.741 OF 2008 LALITESHWAR PRASAD SINGH
VERSUS
THE STATE OF BIHAR

2 14.8.2008 Heard the parties in both appeals and both are disposed of with this common order as they arise out of judgment and order dated 9.6.2008, passed by Additional Sessions Judge FTC No. 5, Muzaffarpur in Sessions Trial No. 460 of 2000, whereby the appellants in Cr Appeal No. 745/08 have been convicted for the offence under section 323 I.P.C. and sentenced to imprisonment for period undergone during trial i.e. five months and six months respectively and appellant in Cr. Appeal No. 741/08 has been convicted for offence under section 323 I.P.C. and sentenced to imprisonment for period undergone during trial i.e. six months.

2 The informant (Shashi Shekhar) stated that while he was writing his practical exam, accused Shashi Kumar Gupta, his class fellow called him outside the room for asking certain phone number and as he came outside, all the miscreants started assaulting him with belts snatched away his spectacles and accused Shashi Kumar Gupta tried to strangle him and told him that they are taking revenge of expulsion of Diwakar and Prabhakar by magistrate from the exam. It is further stated that on hearing informant's sound, other companions, namely, Ashok Kumar, Udai Shankar Sahi and other teachers rushed to the place of occurrence and accused persons fled away. The miscreants

took away wrist watch and spectacles of the informant.

3 The prosecution in support of its case examined altogether ten witnesses. The informant deposed as PW 9, whereas PW 5 is a Professor of the local college who denied seeing the occurrence in his presence. PW 3 Prof Arun Kumar Singh is also not an eye witness to actual occurrence. PW 7 Dr K.K. Prasad is a Medical officer who examined the injury of the informant and found the same to be simple in nature. PW 10 Rajesh Ranjan is the IO of the case who stated that the informant identified the accused persons in the photograph.

4 It is submitted by the learned counsel for the appellants that appellant Laliteshwar Prasad Singh and co accused Chandan Kuamr were not named in the FIR. It is submitted that as per the I.O. the photographs of the suspected miscreants had been shown to the informant at the residence of the District and Sessions Judge, thereafter the T.I. parade was done. It is further submitted that no overt act was attributed to any of the accused persons. He also submitted that the motive of the occurrence has not been proved and FIR is against one Shashi Kumar Gupta and a unknown person.

5 On the other hand, it would appear from the prosecution case that the informant has supported the alleged occurrence in his deposition.

6 This court thus find that the learned trial court has rightly altered charge of section 307 I.P.C. to section 327 I.P.C. and

acquitted the appellants charged under section 379. In view of the aforesaid findings this court does not find any reason to interfere with the judgment of conviction under section 323 I.P.C. This court also finds that as the appellants have remained in custody for about five months, the learned trial court has rightly observed that period already undergone is sufficient to cover the sentence awarded under section 323 I.P.C. As the conviction of appellants have been upheld only under section 323 I.P.C. this court observes that the same would stand without any prejudice and would not come in the way of getting any public or private employment.

7 This appeal is disposed of accordingly.

Shashi.

(S.P.Singh,J).

